

No. 298

AN ACT

SB 1307

Authorizing the creation of port authorities in cities of the third class as bodies corporate and politic, with power to plan, acquire, construct, maintain and operate facilities and projects for the improvement, development and operation of the port.

The General Assembly of the Commonwealth of Pennsylvania hereby enacts as follows:

Section 1. This act shall be known and may be cited as the "Third Class City Port Authority Act."

Section 2. As used in this act:

"Authority" means any body, politic and corporate, created by this act.

"Board" means the governing body of an authority.

"Bond" means and includes the notes, bonds, refunding bonds, and other evidences of indebtedness or obligations which the authority is authorized to issue.

"Construction" means and includes acquisition and construction.

"Federal agency" means and includes the United States of America, the President of the United States and any department or corporation, agency or instrumentality, heretofore or hereafter created, designated or established by the United States of America.

"Improvement" means and includes extension, enlargement and improvement.

"Member" means a member of the governing body of an authority.

"Municipality" means any county, city, incorporated town, borough or township of the Commonwealth of Pennsylvania, or any authority organized under any law of the Commonwealth of Pennsylvania.

"Port facility" includes all real and personal property used in the operation of a port terminal, including, but without being limited to, wharves, piers, slips, ferries, docks, graving docks, drydocks, ship building and/or repair yards, bulkheads, dock walls, basins, carfloats, float-bridges, dredging equipment, radio receiving and sending stations, grain or other storage elevators, warehouses, cold storage, tracks, yards, sheds, switches, connections, overhead appliances, bunker coal, oil and fresh water stations, railroads, motor trucks, floating elevators, airports, barges, scows or harbor craft of any kind, markets and every kind of terminal storage or supply depot, now in use or hereafter designed for use, to facilitate transportation and for the handling, storage, loading or unloading of freight at terminals, and equipment, materials and supplies therefor.

"Port terminal" includes any marine, motor truck, railroad and air terminal, any coal, grain, bulk liquids and lumber terminal and any union, freight and other terminals, used or to be used, in connection with the transportation or transfer of freight, personnel and equipment.

Section 3. (a) There are hereby authorized to be created bodies corporate and politic in cities of the third class, to be known as The Port Authority of (insert name of city), or other name as the authority shall adopt in accordance with the act of May 24, 1945 (P.L.967), relating to fictitious names. The authority shall exercise the public powers of the Commonwealth as an agency thereof. Each authority shall be for the purpose of planning, acquiring, holding, constructing, improving, maintaining and operating, owning, leasing, either as lessor or lessee, port facilities and equipment.

(b) Each authority is hereby granted and shall have and may exercise all powers necessary or convenient for the carrying out of the aforesaid purposes, including but without limiting the generality of the foregoing, the following rights or powers:

- (1) To have perpetual existence.
- (2) To sue and be sued, implead and be impleaded, complain and defend in all courts, to petition the Interstate Commerce Commission (or like body) or join in any proceeding before any such bodies or courts in any matter affecting the operation of any project of the authority.
- (3) To adopt and use and alter at will a corporate seal.
- (4) To establish a principal office and such other office or offices as may be necessary for the carrying on of its duties.
- (5) To acquire, purchase, hold, lease, as lessee and use any franchise, property, real, personal or mixed, tangible or intangible, or any interest therein, necessary or desirable for carrying out the purposes of the authority, and to sell, lease as lessor, transfer and dispose of any property, or interest therein, at any time, required by it.
- (6) To acquire by purchase, lease, or otherwise, and to construct, improve, maintain, repair and operate facilities.
- (7) To make bylaws for the management and regulation of its affairs.
- (8) To appoint officers, agents, employes and servants, to serve at the pleasure of the board (except as may otherwise be provided in collective bargaining agreements) and to prescribe their duties and fix their compensation. The authority may bind itself by contract to employ an executive director, a general manager or a combined executive director and general manager and not more than five other senior executive personnel but no such contract shall be for a period of more than five years.
- (9) To fix, alter, charge and collect fares, rates, rentals and other charges for its facilities by zones or otherwise at reasonable rates to be determined exclusively by it, subject to appeal, as hereinafter provided, for the purpose of providing for the payment of the expenses of the authority, the acquisition, construction, improvement, repair, maintenance and operation of its facilities and properties, the payment of the principal and interest on its obligations, and to comply fully with the

terms and provisions of any agreements made with the purchasers or holders of any such obligations. The authority shall determine by itself exclusively, the facilities to be operated by it and the services to be available to the public. Any person questioning the reasonableness of any rate or services fixed by an authority may bring suit against the authority in the court of common pleas of the county wherein the authority is incorporated. The court shall have exclusive jurisdiction to determine the reasonableness of fares, rates and other charges or services fixed, altered, charged or collected by an authority. The court shall make such order as to fares, rates and other charges or services as to it shall be just and proper. No suit or appeal shall act as a supersedeas. The court shall give priority to all such suits or appeals and no bond shall be required of any party instituting such action or appeal.

(10) To borrow money, make and issue negotiable notes, bonds, refunding bonds and other evidences of indebtedness or obligations of the authority, and to secure the payment of such bonds, or any part thereof, by pledge or deed of trust of all or any of its revenues, rentals and receipts, and to make such agreements with the purchasers or holders of such bonds or with others in connection with any such bonds, whether issued or to be issued as the authority shall deem advisable and in general, to provide for the security for said bonds and the rights of the holders thereof.

(11) To make contracts of every name and nature, and to execute all instruments necessary or convenient for the carrying on of its business. Without limiting the generality of the foregoing, the authority is authorized to enter into contracts for the purchase, lease, operation or management of facilities subject to the jurisdiction of the Interstate Commerce Commission.

(12) Without limitation of the foregoing, to borrow money and accept grants from and to enter into contracts, leases or other transactions with any Federal agency, Commonwealth of Pennsylvania, municipality or corporation.

(13) To have the power of eminent domain including the taking of property of a utility not necessary or useful to the primary function of the utility.

(14) To pledge, hypothecate, or otherwise encumber, all or any of the revenues or receipts of the authority as security for all or any of the obligations of the authority.

(15) To do all acts and things necessary for the promotion of its business, and the general welfare of the authority to carry out the powers granted to it by this act or any other acts.

(16) To enter into contracts with the Commonwealth of Pennsylvania, municipalities or corporations, on such terms as the authority shall deem proper for the use of any facility of the authority, and fixing the amount to be paid therefor.

(17) To enter into contracts of group insurance for the benefit of its

employees, or to continue in existence any existing insurance or pension or retirement system or any other employe benefit arrangement covering employes of an acquired existing transportation system, or to set up a retirement or pension fund or any other employe benefit arrangement for such employes.

(18) An authority shall have no power, at any time or in any manner, to pledge the credit or taxing power of the Commonwealth of Pennsylvania or any political subdivision, nor shall any of its obligations be deemed to be obligations of the Commonwealth of Pennsylvania or of any of its political subdivisions, nor shall the Commonwealth of Pennsylvania or any political subdivision thereof be liable for the payment of principal or interest on such obligations.

(19) Private rights and property in the beds of existing public highways vacated in order to facilitate the purposes of the authority shall not be deemed destroyed or ousted by reason of such vacation, but shall be acquired or relocated by the authority in the same manner as other property.

(20) To establish carrier routes and services, including water routes and water services as it deems necessary for the efficient operation of the port; provided, that the authority shall not engage in the transportation of property by motor vehicle outside the port terminal without the approval of, and subject to regulation by, Pennsylvania Public Utility Commission.

(21) To self insure or otherwise provide for the insurance of any property or operations of the authority against any risks or hazards.

(22) To lease property or contract for service, including managerial and operating service.

(23) To enter into agreements with any public utility operating a railroad or any other transportation facility wholly or partially within the port area for the joint or exclusive use of any property of the authority or the public utility or the establishment of routes over the rights of way of the public utility or the authority or the establishment of joint rates.

(24) To develop programs designed solely to advertise, promote and stimulate the development and use of its port and to join and to authorize its agents, employes and servants to join national and local trade and professional organizations organized for the purpose of promoting the betterment of port facilities and the improvement of the efficiency of persons connected with or employed by the port.

Section 4. The bonds of the authority, hereinabove referred to and authorized to be issued, shall be authorized by resolution of the board and shall be of such series, bear such date or dates, mature at such time or times, bear interest at such rate or rates, be in such denominations, be in such form, either coupon or fully registered without coupons, carry such registration, exchangeability and interchangeable privileges, be payable in such medium of payment and at such place or places, be subject to such

terms of redemption, at such prices not exceeding one hundred five per cent of the principal amount thereof, and be entitled to such priorities in the revenues, rentals or receipts of the authority as such resolution or resolutions may provide. The bonds shall be signed by such officers as the authority shall determine, and coupon bonds shall have attached thereto interest coupons bearing the facsimile signature of the treasurer of the authority, all as may be prescribed in such resolution or resolutions. The bonds may be issued and delivered, notwithstanding that one or more of the officers signing the bonds or the treasurer, whose facsimile signature shall be upon the coupon, or any officer thereof, shall have ceased to be such officer at the time when the bonds shall actually be delivered.

The bonds may be sold at public or private sale, for such price or prices as the authority shall determine. Pending the preparation of the definitive bonds, interim receipts or temporary bonds may be issued to the purchaser or purchasers of the bonds and may contain such terms and conditions as the authority may determine.

Any resolution or resolutions, authorizing any bonds may contain provisions which shall be part of the contract with the holders thereof as to (i) pledging the full faith and credit of the authority for such obligations, or restricting the same to all or any of the revenues, rentals or receipts of the authority from all or any facilities, (ii) the construction, improvement, operation, extension, enlargement, maintenance and repair of the facilities and the duties of the authority with reference thereto, (iii) the terms and provisions of the bonds, (iv) limitations on the purposes to which the proceeds of the bonds, then or thereafter to be issued, or of any loan or grant of the United States may be applied, (v) the rate of tolls, rentals and other charges for use of the facilities of or for the services rendered by the authority, including limitations upon the power of the authority to modify any lease or other agreement, pursuant to which tolls, rentals or other charges are payable, (vi) the setting aside of reserves or sinking funds and the regulations and disposition thereof, (vii) limitations on the issuance of additional bonds, (viii) the terms and provisions of any deed of trust or indenture securing the bonds or under which the same may be issued, and (ix) any other or additional agreements with holders of the bonds.

The authority may enter into any deeds of trust indentures or other agreements with any bank or trust company or any person in the United States having power to enter into the same, including any Federal agency as security for such bonds, and may assign and pledge any or all of the revenues, rentals or receipts of the authority thereunder. The deed of trust indenture or other agreement may contain such provisions as may be customary in such instruments or as the authority may authorize, including, but without limitation, provision as to (i) the construction, improvement, operation, maintenance and repair of facilities and the duties of the authority with reference thereto, (ii) the application of funds and the safeguarding of funds on hand or on deposit, (iii) the rights and

remedies of said trustees and the holders of the bonds (which may include restrictions upon the individual right of action upon such bondholders), and (iv) the terms and provisions of the bonds or the resolutions authorizing the issuance of the same.

The bonds shall have all the qualities of negotiable instruments under the Uniform Commercial Code of the Commonwealth of Pennsylvania.

Section 5. The rights and remedies, hereinafter conferred upon or granted to the bondholders, shall be in addition to, and not in limitation of, any rights and remedies lawfully granted to such bondholders by the resolution or resolutions providing for the issuance of bonds or by any deed of trust indenture or other agreement under which the same may be issued. In the event that the authority shall default in the payment of principal or interest on any of the bonds after such principal or interest shall become due, whether at maturity or upon call for redemption, and such default shall continue for a period of thirty days, or in event the authority shall fail or refuse to comply with the provisions of this act or shall default in any agreement made with the holders of the bonds, the holders of twenty-five per cent in the aggregate of the principal amount of the bonds then outstanding by instrument or instruments filed in the office of the recorder of deeds of the county wherein the authority is located and proved or acknowledged in the same manner as a deed to be recorded, may (except as such right may be limited under the provisions of any deed of trust indenture or other agreement as aforesaid) appoint a trustee to represent the bondholders for the purposes herein provided.

The trustee and any trustee under any deed of trust indenture or other agreement may and, upon written request of the holders of twenty-five per cent (or such other percentages as may be specified in any deed of trust indenture or other agreement aforesaid) in principal amount of the bonds then outstanding, shall in his or its own name, (i) by mandamus or other suit, action or proceeding, at law or in equity, enforce all rights of the bondholders, including the right to require the authority to collect rates, rentals or other charges, adequate to carry out any agreement as to, or pledge of, the revenues or receipts of the authority, and to require the authority to carry out any other agreements with or for the benefits of the bondholders and to perform its and their duties under this act, (ii) bring suit upon the bonds, (iii) by action or suit in equity require the authority to account as if it were the trustee of an express trust for the bondholders, (iv) by action or suit in equity enjoin any acts or things which may be unlawful or in violation of the rights of the bondholders, and (v) by notice in writing to the authority declare all bonds due and payable and if all defaults shall be made good, then with the consent of the holders of twenty-five per cent (or such other percentage as may be specified in any deed of trust indenture or other agreement aforesaid) of the principal amount of the bonds then outstanding to annul such declaration and its consequences.

The court of common pleas of the county wherein the authority is located shall have jurisdiction of any suit, action or proceedings by the trustees on behalf of the bondholders. Any trustee, when appointed as aforesaid or acting under a deed of trust indenture or other agreement and whether or not all bonds have been declared due and payable, shall be entitled as of right to the appointment of a receiver, who may (to the same extent that the authority itself could so do) enter and take possession of the facilities of the authority or any part or parts thereof, the revenues, rentals or receipts from which are or may be applicable to the payment of the bonds so in default and operate and maintain the same and collect and receive all rentals and other revenues thereafter arising therefrom in the same manner as the authority or board might do, and shall deposit all such moneys in a separate account and apply the same in such manner as the court shall direct. In any suit, action or proceeding by the trustee, the fees, counsel fees and expenses of the trustee and of the receiver, if any, and all costs and disbursements allowed by the court shall be a first charge on any revenues, rentals and receipts derived from the facilities of the authority, the revenues or receipts from which are or may be applicable to the payment of the bonds so in default. Said trustee shall, in addition to the foregoing, have and possess all of the powers necessary or appropriate for the exercise of any functions specifically set forth herein or incident to the general representation of the bondholders in the enforcement and protection of their rights.

Nothing in this act shall authorize any receiver appointed pursuant to this act for the purpose of operating and maintaining any facilities of the authority, to sell, assign, mortgage or otherwise dispose of any of the assets of whatsoever kind and character, belonging to the authority. It is the intention of this act to limit the powers of such receiver to the operation and maintenance of the facilities of the authority, as the court may direct, and no holder of the bonds of the authority nor any trustee shall ever have the right in any suit, action or proceedings, in law or in equity, to compel a receiver, nor shall any receiver ever be authorized or any court be empowered to direct a receiver to sell, assign, mortgage or otherwise dispose of any assets of whatever kind or character belonging to the authority.

Section 6. (a) The powers of the authority shall be exercised by a board composed of eleven members. The Governor and the Secretary of the Department of Transportation shall be ex officio members of the authority. The mayor shall appoint nine members of the board for three year terms, all of whom shall be residents of the county and citizens of the United States, and the Governor and the Secretary of Transportation shall each appoint a member to serve at their pleasure. Three members shall serve for one year, three for two years, and three for three years, from January 1 next succeeding the date of approval of this act. Their terms shall be staggered in a similar manner. Whenever a vacancy occurs, the

appointing authority shall appoint a member for a term of three years to succeed the member whose term has expired, or for their pleasure, or for the unexpired term, as the case may be. Members shall hold office until their successors have been appointed and may succeed themselves. A member shall receive no compensation for his services but shall be entitled to the necessary expenses, including traveling expenses incurred in the performance of his duties.

(b) Within ninety days after the creation of the authority, the board shall meet and organize by electing from their number a chairman, a vice chairman and such other officers as the board may determine. Six members of the board shall constitute a quorum for its meetings. Members of the board shall not be liable personally on the bonds or other obligations of the authority, and the rights of creditors shall be solely against such authority. The board may delegate to one or more of its agents or employes such of its powers as it shall deem necessary to carry out the purposes of this act, subject always to the supervision and control of the board. The board shall have full authority to manage and operate the business of the authority and to prescribe, amend and repeal bylaws, rules and regulations governing the manner in which the business of the authority may be conducted and the powers granted to it may be exercised and embodied. Copies of such bylaws, rules and regulations shall be filed with the secretary of the authority.

Section 7. The authority shall exercise its power of eminent domain in the manner prescribed by the act of June 22, 1964 (P.L.84), known as the "Eminent Domain Code,": Provided, That no property owned or used by the United States, the Commonwealth of Pennsylvania, any political subdivision thereof, or any body politic and corporate organized as an "authority" under any law of the Commonwealth, shall be taken under the right of eminent domain.

Section 8. All moneys of the authority, from whatever source derived, shall be paid to the treasurer of the authority. The moneys shall be deposited in the first instance by the treasurer in one or more banks or trust companies, in one or more special accounts, and each of such special accounts to the extent the same is not insured shall be continuously secured by a pledge of direct obligations of the United States of America or the Commonwealth of Pennsylvania, having an aggregate market value exclusive of accrued interest, at all times, at least equal to the balance on deposit in such account. The securities shall either be deposited with the treasurer or held by a trustee or agent satisfactory to the authority. All banks and trust companies are authorized to give such security for such deposits. The moneys in said accounts shall be paid out on the warrant or other order of the chairman of the authority or of such other person or persons as the authority may authorize to execute such warrants or orders. As soon after the end of each fiscal year as may be expedient the board shall cause to be prepared and printed a report and financial statement

certified to by an independent certified public accountant of its operations and of its assets and liabilities. A condensed annual financial report of the authority shall be published each year, once a week for two consecutive weeks, in at least two newspapers of general circulation in the county creating the authority. A copy of the annual report shall be filed with the mayor of the city creating the authority and with the governing body of each municipality in which the authority operates.

Section 9. All contracts and purchases shall be made in accordance with the act of June 23, 1931 (P.L.932), known as "The Third Class City Code."

Section 10. The use of the facilities of the authority and the operation of its business shall be subject to the rules and regulations adopted from time to time by the authority, but the authority shall not be authorized to do anything which will impair the security of the holders of the obligations of the authority or violate any agreements with them or for their benefit.

Section 11. The Commonwealth does hereby pledge to, and agree with any person or Federal agency subscribing to or acquiring the bonds to be issued by the authority for the construction, extension, improvement or enlargement of any facility, or part thereof, that the Commonwealth will not limit or alter the rights hereby vested in the authority, until all bonds, at any time issued, together with the interest thereon, are fully met and discharged. The Commonwealth of Pennsylvania does further pledge to, and agree with the United States and any other Federal agency, that in the event any Federal agency shall construct or contribute any funds for the construction, extension, improvement or enlargement of any facility, or portion thereof, the Commonwealth will not alter or limit the rights and powers of the authority in any manner which would be inconsistent with the continued maintenance and operation of the facility, or the improvement thereof, or which would be inconsistent with the due performance of any agreements between the authority and any such Federal agency, and the authority shall continue to have and may exercise all powers herein granted, so long as the same may be necessary or desirable for the carrying out of the purposes of this act and the purposes of the United States in the construction or improvement or enlargement of the facility or such portion thereof.

Section 12. The effectuation of the authorized purposes of any authority created under this act, shall and will be in all respects for the benefit of the people of the Commonwealth, for the increase of their commerce and prosperity, and for the improvement of their health and living conditions; and since the authority will be performing essential government functions in effectuating such purposes, the authority shall not be required to pay any taxes or assessments upon any property acquired or used by it for such purposes, or fee, bridge tolls or other charge imposed or authorized to be imposed by virtue of any law of the Commonwealth of Pennsylvania, except vehicle registration fees, liquid

fuels taxes, fuel use taxes, gross receipts taxes imposed as an excise on the use of public highways, and tolls imposed by the Pennsylvania Turnpike Commission. In lieu of taxes or special assessments, the authority may agree to make payments to any municipality. The bonds issued by the authority, their transfer and the income therefrom, including any profits made on the sale therefrom, shall at all times be free from taxation, other than inheritance and estate taxation, within the Commonwealth of Pennsylvania.

Section 13. Any municipality or owner is hereby authorized to sell, lease, lend, grant, transfer or convey to the authority, with or without consideration, any facility or any part or parts thereof, or any interest in real or personal property which may be used by the authority in the construction, improvement, maintenance or operation of any facility. Any municipality is also authorized to transfer, sell, assign and set over to the authority any contracts which may have been awarded by such municipality for the construction of facilities not begun, or if begun, not completed.

Section 14. The authority shall deal with and enter into labor contracts with the employes of the authority in accordance with the act of July 23, 1970 (P.L.563), known as the "Public Employe Relations Act."

Section 15. Employes who have left the employ of the authority to enter the military service of the United States shall have such reemployment rights with the authority as may be granted under any law of the United States or the Commonwealth of Pennsylvania.

Section 16. No civil action shall be commenced in any court against the authority by any person for any injury to his person unless it is commenced within two years from the date that the injury was received or the cause of action accrued. Within six months from the date that the injury was received or within six months from the date the cause of action accrued any person claiming damages from the authority shall file, in the office of the secretary of the authority, either by himself or his agent or attorney, a notice in writing of the claim against the authority stating briefly the facts upon which the claim is based. No cause of action may be validly entered of record where there was a failure to file such notice within the time required herein, except leave of court to enter such action upon a showing of a reasonable excuse for such failure to file said notice shall first have been secured.

APPROVED—The 6th day of December, A. D. 1972.

MILTON J. SHAPP

The foregoing is a true and correct copy of Act of the General Assembly
No. 298.

A handwritten signature in black ink, reading "C. McLaughlin Tucker". The signature is written in a cursive style with a large initial "C" and a prominent flourish at the end.

Secretary of the Commonwealth.